

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-221010

**DATE:** May 6, 1986

**MATTER OF:** Deborah L. Beatty - Loan Origination Fee -  
Construction of Residence

**DIGEST:**

1. The agency was not in error when it allowed reimbursement for a 1 percent loan origination fee, which the lending institution originally referred to as "points," a nonreimbursable item. We look to the nature of the fee to determine if it can be allowed, and both the settlement sheet and a bank statement designated the item as a loan origination fee.
2. A transferred employee was reimbursed a 1 percent loan origination fee and claims an additional 1.5 percent fee in connection with the construction of a residence at her new duty station. The claim for the additional 1.5 percent is denied, since paragraph 2-6.2d(1)(j) of the Federal Travel Regulations limits reimbursement of expenses that result from the construction of a residence to those which are comparable to expenses that are reimbursable in connection with the purchase of an existing residence in the area, which in this case is 1 percent.

Mr. W. D. Moorman, an authorized certifying officer for the United States Department of Agriculture (Agriculture), has requested our decision on Ms. Deborah L. Beatty's claim for a loan origination fee she incurred when constructing a residence at her new duty station. The issues are whether, and to what extent, a loan origination fee incurred in connection with construction of a residence at a new duty station may be reimbursed. We find that the loan origination fee is reimbursable for the portion that relates to the purchase of the residence, but is not reimbursable for the portion attributable to construction of the residence.

035356

BACKGROUND

Ms. Beatty, an Agriculture employee, was transferred from Albuquerque, New Mexico, to Washington, D.C., in February 1983. Ms. Beatty had a residence constructed at her new duty station, and incurred a loan origination fee of 2.5 percent. While the lending institution originally referred to this charge as "points," it subsequently explained that it refers to construction loan origination fees as "points." Agriculture was advised by the United States Department of Housing and Urban Development (HUD) that a 1 percent loan origination fee was customary in the area, and it allowed Ms. Beatty this amount.

Subsequently, Ms. Beatty submitted a reclaim voucher for the balance of the fee originally claimed. In support of this reclaim voucher, she provided a HUD memorandum which stated that for the area a 2.5 percent loan origination fee was customary for construction loans, while a 1 percent loan origination fee was customary for the purchase of an existing structure.

Mr. Moorman asked:

- "1. Since the lending institution originally designated the fee paid as points, were we in error in paying the 1 percent even though they later clarified this as their way of designating the origination fee on a construction loan?
- "2. If the answer to the above is yes, should we collect the overpayment from Ms. Beatty?
- "3. Since the original loan was a construction loan that was later converted to a permanent loan, would Ms. Beatty be entitled to the full 2.5 percent charged or would she only be entitled to the 1 percent that would have been applicable to an already existing residence?"

OPINION

In response to the first question, the way in which a lending institution characterizes a charge is not determinative. See, e.g., Roger J. Salem, 63 Comp. Gen. 456, 458 (1984). We look to the nature of the fee to determine if it can be allowed under the law. In this case, the settlement statement of May 15, 1984, specifically designates the 2.5 percent charge as a loan origination fee, and the bank has verified the fact that the amount charged represents their cost to process the loan. Thus, the charge is distinguished from "points," which is a part of the price for the hire of the money, and therefore not reimbursable. See 47 Comp. Gen. 213 (1967). Accordingly, Agriculture was not in error in allowing a 1 percent fee merely because the lending institution originally referred to its charge as "points," rather than as a "construction loan origination fee."

Since the answer to the first question was "no," it is unnecessary to reach the second question.

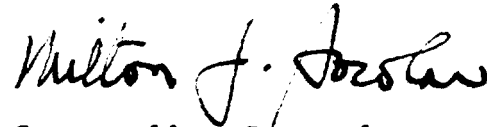
As to the third question, under 5 U.S.C. § 5724a(a)(4) (1982), an employee may be reimbursed for the expenses he incurs in purchasing a residence pursuant to a permanent change of station. Paragraph 2-6.2d(1)(b) of the Federal Travel Regulations (Supp. 4, August 23, 1982) (FTR), incorp. by ref., 41 C.F.R. § 101-7.003 (1985), permits reimbursement of loan origination fees. However, FTR para. 2-6.2d(1)(j) limits reimbursement of expenses that result from the construction of a residence to those which are comparable to expenses that are reimbursable in connection with the purchase of an existing residence. Thus, we have held that when construction mortgage loan charges exceed the amounts charged for permanent mortgage loans, there can be no reimbursement of the excess. Wesley J. Lynes, B-182412, April 18, 1975; B-164491, November 15, 1968.

Agriculture was advised by HUD that a 1 percent loan origination fee was customary in the area for the purchase of a residence. Also, in support of her claim, Ms. Beatty provided a HUD memorandum which stated that a 2.5 percent loan origination fee was customary in the area for construction loans, while a 1 percent loan origination fee was customary for the purchase of an existing structure.

B-221010

Therefore, the additional 1.5 percent loan origination fee was incurred as a result of the construction of a residence, rather than the purchase of an existing residence.

Accordingly, Ms. Beatty's claim for the additional 1.5 percent loan origination fee is denied.

A handwritten signature in black ink, reading "Milton J. Jordan". The signature is written in a cursive style with a large, stylized "M" and "J".

Comptroller General  
of the United States